IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7174 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VREJESH TEXTILE MILLS PVT.LTD.

Versus

GENERAL MANAGER

Appearance:

1. Special Civil Application No. 7174 of 1993

MR ARUN H MEHTA for Petitioner No. 1-6

MR MA BUKHARI, AGP for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 07/03/2003

ORAL JUDGEMENT

The petitioners, in this petition, have challenged the showcause notice dated 5th March, 1992 and Recovery Order dated 2nd July, 1993 and demand notice dated 23-2-1998 and has further prayed for an order of injunction restraining the respondents from recovering the amount of Rs.25 lacs or any part thereof or any other amount from the petitioners.

2) The brief facts giving rise to the present petition are that the petitioner No.1 company was formerly known as Raj Ratna Textile Mills Ltd., and the said company was taken over by another company known as New Standard Engineering Co. Ltd. Originally Rajratna Textile Mills Ltd., was established in the year 1904 and went into liquidation in the year 1960. Thereafter, through the machinery of the Official Liquidator and the Court proceedings, one Shri Ramanbhai Patel took over the conduct of the business of said Raj Ratna Textile Mills Ltd., and carried on the business under the name and style of M/s. Vrajesh Textile Mills Pvt.Ltd., petitioner No.1 herein. After New Standard Engineering Co.Ltd.,("NSE" for short) took over the petitioner No.1-company, said company decided to mordenise the plant and machinery and buildings of the petitioner No.1 company. Since the petitioner No.1 company was a sick unit, the New Standard Engineering Co.Ltd., had approached the Government of Gujarat for availing of various reliefs and concessions including cash subsidy under the scheme, which is known as Cash Subsidy Scheme for Industries, 1977. The NSE was paid a sum of Rs.25 lacs on the terms and conditions of the said policy as well as, on the agreement which was entered into by the said company. Since there had been continuous crisis in the textile industry, the NSE disposed of the said unit in the year 1990 to one Shyamprakash Spinning Mills, Ahmedabad.

3) The petitioners, thereafter received letters dated 5th February, 1992 calling upon them to refund the said amount of Rs.25 lacs because, as mentioned in the said letter, they had not complied with the terms and conditions of the agreement on which the said subsidy was granted to them. On receipt of the said letter NSE gave reply on 18th February, 1992 contending that all the terms and conditions were fulfilled and only on that basis the subsidy was given. It was further contended that no details were given in the said showcause notice, which would enable the NSE or any of the petitioners herein to reply to the said notice. No reply was given by the respondent to the said letter of NSE. Thereafter, petitioners received another letter dated 2nd July, 1993 repeating the content of the earlier showcause notice and further stating that no reply was given to the earlier showcause and, therefore, the petitioner should deposit a sum of Rs.25 lacs in the Government Treasury, failing which the same shall be recovered as arrears of land revenue. Even in this letter also, it was not pointed out as to how and in what manner, the breach was committed by the petitioners and/or NSE, which would

entitle the respondent to recover the aforesaid amount.

4) On receipt of the said letter dated 2nd July, 1993 issued by the respondents, the petitioners replied to the said letter on 10th July, 1993 stating that they have already replied to the earlier showcause notice and that the terms and conditions of the agreement were duly complied with, and, therefore, NSE was not liable to return the amount.

5) Since the respondent-authorities were bent upon to recover the said amount from the petitioners, the petitioners have no other alternative but to challenge the said action of the respondent-authorities by filing this petition before this Court.

6) This petition was admitted on 28-7-1994 and it was made clear that the petitioner was at liberty to move afresh for stay as and when necessity arose. Thereafter, during the pendency of this petition, the Alien Recovery Mamlatdar has issued a notice dated 23-2-1998 for recovery of the amount from the petitioners by invoking the provisions contained in Section 152 of the Land Revenue Code. Therefore, petitioners moved Civil Application No.3175/1998 seeking amendment in the main petition and also interim relief against the implementation of the said showcause notice. This Court was pleased to pass an order on 6-4-1998 in the said Civil Application and granted interim relief as prayed for.

7) The main grievance of the petitioners is that the showcause notice issued by the respondent No.1 is very vague and bad in law and it did not specify, which of the terms and conditions, if at all, are committed breach of, by the petitioners and/or NSE and with the result, the petitioners and the NSE are not in a position to reply to the said showcause notice. The action of the respondent-authorities is further challenged on the ground that the petitioners are not given sufficient opportunity to showcause against the respondent-authority's action of recovering the amount of Rs.25 lacs and in default, threat to recover the said amount as arrears of land revenue. The petitioners have further challenged the action of the authorities on the ground that the petitioners have not entered into any agreement whatsoever with the respondent and/or the Government of Gujarat nor have they received any amount of Cash Subsidy, much less amount of Rs.25 lacs and, therefore, the entire proceedings initiated against the petitioners were bad in law. It is further contended

that the agreement was entered into by the State Government with NSE and no showcause notice was given to NSE and therefore, any recovery sought from the NSE was without any authority of law and also violative of the principles of natural justice.

8) I have heard the learned advocate Mr.Thakkar appearing on behalf of Mr.A.H.Mehta for the petitioner. I have also considered the averments and submissions made in the petition, as well as I have also perused the documents attached with the petition. I am of the view that the Cash Subsidy was sanctioned to NSE in the year 1983. After expiry of the period of more than nine years the recovery was sought for by the respondent-authorities, on the ground that the petitioners have not complied with the terms and conditions of the agreement entered into at the time of granting Cash Subsidy. The showcause notice dated 5th February, 1992 was duly replied by the NSE by its letter dated 18-2-1992, wherein it was specifically stated that the NSE has fulfilled all the conditions stipulated in the agreement of July, 1983, entered into with the State Government. NSE has complied with all documentary requirements and certificate called for from ICICI and other agencies, and, thereafter, State Government has disbursed the second and final disbursement of subsidy. NSE has further given its reply on 28th February, 1992, wherein it was also reiterated that all the terms and conditions were satisfied by NSE. The respondent-authorities have nowhere stated as to, which term and condition was not complied with and what sort of breach was committed by the petitioners. It is also a matter of fact that the notices were issued only on the petitioners and NSE, in whose favour the cash subsidy was granted was not issued any showcause notice whatsoever. Even otherwise, unless and until the specific breach is pointed out to the petitioners from whom the recovery is sought for, the authorities are not justified in enforcing the recovery from the petitioners and/or NSE. The grievance raised by the petitioners in the present petition is, therefore justifiable and no recovery can be enforced, on such flimsy ground. Notices and orders as well as demand notices issued by the respondent against the petitioners are, therefore, quashed and set aside and this Court is of the clear view that the respondent-authorities are not justified in enforcing any recovery from the petitioners. The notices and orders at Annexure-C, F and H, as well as, notice of demand dated 23-2-1998 are, therefore, quashed and set aside.

9) The petition is allowed. Rule made absolute with

no order as to costs.

(K.A.Puj, J.)
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